

UTEX Communications Corp. d/b/a



Written Materials for October 3, 2008 *ex parte*
Meeting Regarding Inter-carrier Compensation
WC Docket 99-68, CC Docket No. 01-92, WC
Docket No. 04-36, WC Docket No. 08-8, WC
Docket No. 07-256, WC Docket No. 08-152 and
WC Docket No. 08-160

Intercarrier Compensation Principles

- LEC-LEC intercarrier compensation **must** and all intercarrier compensation **should** reflect only the “additional cost” of terminating a call.
- When two LECs exchange traffic and when the originating LEC is not functioning as a provider of telephone toll then 251(b)(5) and 251(d)(2) directly apply.
- If and to the extent traffic exchanged between two LECs is subject to exchange access then they are joint providers and one LEC cannot charge the other but must instead look to the entity providing telephone toll service for payment. The ILECs cannot force CLECs to implement the MECAB “Single Bill Option.”
- Voice-capable IP-enabled providers are Enhanced/Information service providers, are not carriers and do not provide telephone toll. They therefore cannot be held subject to exchange access charges.
- The Commission must resolve how multiple LECs signal, route and rate the traffic they jointly handle as co-carriers and peers.
- Implicit subsidies must be moved over to universal service support, which has to be explicit, nondiscriminatory and competitively neutral.
- If the Commission does not grant similar relief as part of holistic reform it must grant FeatureGroup IP’s petition in WC Docket 07-256.

LEC-LEC intercarrier compensation ***must*** and all intercarrier compensation ***should*** reflect only the “additional cost” of terminating a call.

- Section 251(b)(5) applies to all traffic exchanged between two LECs when each is acting as an LEC (e.g., providing telephone exchange and/or exchange access) and the originating carrier is not providing telephone toll; the “carve out” in 251(g) does not extend to any traffic exchanged between an ILEC and a CLEC. ILECs cannot recover above-cost charges from CLECs in the name of Universal Service. See *Local Competition Order* ¶713.
- Section 252(d)(2) limits 251(b)(5) charges to the “additional cost” associated with terminating a call.
- Section 252(d)(1) requires that facilities used for 251(c)(2) interconnection follow TELRIC principles, which prohibits recourse to special access rates.
- Cost-causation principles do not allow an ILEC to require a CLEC to cover the facilities costs associated with the ILECs’ originating traffic.
- Traditional telephone toll is subject to exchange access until the Commission – as contemplated by 254(e) and allowed by 251(g) – finishes the transition to the additional cost standard for that traffic as well. Exchange access charges assessed against providers of traditional telephone toll service may lawfully exceed additional cost, but as a matter of policy they should not.

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- The ILECs want to recover exchange access charges from CLECs in several circumstances where the CLEC is providing telephone exchange and/or exchange access and is not providing telephone toll service. Examples include “Virtual NXX” traffic and Voice-Enabled IP-based services offered by 3rd party ESPs where one of the two LECs provides PSTN connectivity to the ESP.
- These call types involve the “transport and termination of telecommunications” as between two LECs, and fall squarely within 251(b)(5). They are not “carved out” by 251(g). The “additional cost” standard in 252(d)(2) applies. One LEC is not the other LEC’s “access customer” because the LECs are co-carriers and peers.
- To the extent an LEC’s customer is deemed to be providing “telephone toll service” or somehow otherwise subject to access charges then both LECs are joint access providers.

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- If Voice-Enabled IP-based services provided by 3rd party entities are deemed subject to access charges, then the LECs that jointly handle the call at either end are co-carriers and peers. One LEC is not the other LEC’s “access customer.”
- To the extent an LEC’s customer is deemed to be providing “telephone toll service” or somehow otherwise subject to access charges then both LECs are joint access providers.
- The Commission has consistently refused to allow one access provider to compel a co-carrier and joint access provider into the role of “access customer.” It has specifically rejected ILECs’ attempts to do so with regard to both CMRS (for intraMTA traffic) and CLECs.
- Joint access arrangements are governed by MECAB meet point principles pursuant to FCC rulings. These arrangements are implemented in ILEC tariffs. Unless the two LECs voluntarily and contractually agree to the “Single Bill Option” then each LEC separately bills the access customer, and does not look to the other LEC for payment.
- FeatureGroup IP has never agreed to use the Single Bill Option; all of its interconnection arrangements implement meet-point billing; FeatureGroup IP’s interstate access tariff exclusively uses meet-point billing and does not contemplate Single Bill arrangements with other LECs.

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- AT&T and Verizon have functionally admitted that IP-enabled Voice-capable applications and services offer enhanced functions. See Verizon September 19 “Legal Authority” White Paper, CC Dockets 96-45 and 01-92 and WC Docket 04-36, pp. 5-6 (asserting VoIP provides enhanced functions); AT&T September 2, 2008 Reply Comments in WC Docket 08-152, p. 35 (same).
- IP-enabled Voice-capable applications and services inherently involve a change in content. No ILEC has contested FeatureGroup IP’s demonstration in prior filings in, *inter alia*, CC Docket 01-92 and WC Dockets 07-256, 08-8 and 08-152 that this is so.
- ESPs that are not “interexchange carriers” and do not provide “interstate or foreign telecommunications services” are treated as end users.
- As a Legal matter, neither the non-carrier ESP nor any CLEC that provides connectivity to a non-carrier ESP can be held subject to exchange access or switched access under FCC Rule 69.5 unless the ESP voluntarily subscribes to access service.
- As a Legal matter if an entity is not providing “telephone toll service” it cannot be mandatorily assessed “exchange access” charges.
- From a Policy perspective all similar uses of the PSTN that incur similar costs should incur the same charge.
- The most appropriate price for transport or termination of Voice-enabled IP-based services – and the telephone exchange and telephone toll services with which they sometimes compete – is a cost-based rate that is consistent with 252(d)(2).
- The FCC’s \$0.0007 rate for “ISP-bound” traffic is a “reasonable approximation” of the “additional cost” of terminating any and all calls, without regard to “classification. That price could be used for all “telecommunications” traffic, including “telephone toll service” traffic that is subject to “exchange access.” Alternatively, state-specific cost determinations will also adequately serve if they comport with 252(d)(2) and are applied to all calls without regard to classification.
- The Commission should explicitly encourage LECs to voluntarily agree to a “mutual waiver” as allowed by 252(d)(2)(B)(i).

The Commission must resolve how multiple LECs signal, route and rate the traffic they jointly handle as co-carriers and peers.

- Interconnection and intercarrier compensation involves far more than just “transport and termination.” Significant issues relating to signaling, routing and rating for both the originating and the terminating ends must be addressed and resolved.
- SS7 signaling is not the exclusive or even the preferred method; it is not as capable, robust, interoperable, flexible or modern as IP-based protocols.
- The ILECs must be reminded that they have the obligation to interconnect in any “technically feasible” manner, and IP interconnection is technically feasible.
- Some ILECs will not agree to SS7 B-Link signaling interconnection unless the CLEC “buys” “SS7 service” from the ILEC as an “access customer.”
- The ILECs’ signaling proposals would impose legacy telephony conventions on IP-based services and functionally regulate or require changes to well-established Internet RFCs.
- The ILECs’ signaling proposals are not even consistent with SS7 standards in many ways, particularly when it comes to ISUP and global numbering conventions.
- The ILECs’ rating proposals are inconsistent with the Act and current rules, as shown above.
- The ILECs refuse to honor routing preferences of the address holders and use the LERG for anticompetitive purposes.
- The ILECs refuse to honor CLECs’ numbering resources and rate center designations by refusing to route calls originating on the ILECs’ networks and addressed to the CLEC’s network on a “non-toll” basis unless the CLEC agrees to become the ILEC’s “access customer.”

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- Rate of return RLEC claims of “confiscation” if they cannot recover exchange access charges from ESPs and/or CLECs in violation of the Act and current rules fail the applicable legal tests and are not ripe.
- As a matter of law and policy all LEC-LEC intercarrier compensation – and compensation relating to jointly handled ESP traffic – must and should incorporate the “additional cost” standard in 252(d)(2). As a matter of policy “telephone toll service” should pay “exchange access” charges that also meet the “additional cost” standard.
- Any need for further revenues beyond “additional cost” that LECs can demonstrate are necessary for “universal service” must be removed from access-based or other implicit revenue streams and moved to universal service support.
- This need should be demonstrated through technologically and competitively neutral individual cost studies based on something other than legacy-centric “wire centers” and must consider all relevant costs and revenues, including those presently deemed to be “unregulated.”
- The confiscation analysis must also include scrutiny of affiliate transactions.

If the Commission does not grant similar relief as part of holistic reform it must grant FeatureGroup IP's petition in WC Docket 07-256.

- FeatureGroup IP's primary position is that exchange access does not apply to Voice-enabled IP-based services; that subjecting this traffic to exchange access will cause massive network re-engineering and will only lead to continued delay and litigation over specifics.
- To the extent the Commission disagrees, FeatureGroup IP seeks forbearance from any of the potentially applicable statutes and rules that would allow an ILEC to impose exchange access charges on FeatureGroup IP when the ILEC transports and terminates Voice-enabled IP-based traffic from FeatureGroup IP's ESP end user customers.
- This request would not preclude a holding that Voice-Enabled IP-based services are subject to exchange access charges; it would merely treat the ESP like a traditional IXC and reaffirm that LECs are engaged in jointly provided access with the result that each LEC individually bills the ESP unless the LECs have voluntarily agreed to use the Single Bill Option.